IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 972 of 1994

Between:

Hyderabad Transport Contractors, Cuddapah,

Rep. By its Proprietor Shaik Sahebjan

..... PETITIONER

AND

1. The A.P. State Civil Supplies Corporation Limited,
   (State Govt. Undertaking), Civil Supplies Bhavan,
   Somajiguda, Hyderabad, rep. By its Vice Chairman
   & Managing Director.

2. The Joint Collector-Cum-Ex.Officio Director,
   A.P. State Civil Supplies Corporation Ltd.,
   Cuddapah, Cuddapah Dist.

3. The District Supply Officer-cum-Ex. Officio Dist.Manager,
   A.P. State Civil Supplies Corporation Ltd.,
   Cuddapah, Cuddapah Dist.

Note: R2 dismissed for default as per Court Order dt.26-7-1999.

..... Respondents

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondent authorities in forfeiting the earnest money deposit deposited by the petitioner at the time of filing tenders in response to the tender notice for transporting the food grains i.e. rice, wheat and sugar etc., from Food Corporation of India/A.P. State civil Supplies corporation or any godowns within the District or outside the District to Cuddapah mandal level stock point and from Mandal Level Stock point to village point/fair price shop point for the period from 1-4-1991 to 31-3-1992 as illegal and arbitrary and consequently direct the respondent authorities to refund the Earnest Money Depost of Rs.50,000/- to the petitioner forthwith .

Counsel for the Petitioner:MR. P.V.Sanjay Kumar for K.Ashok Reddy, Advocate

Counsel for the Respondent No.: Sri VTM Prasad, Advocate

The Court made the following :

ORDER:

This Writ Petition is filed, seeking Writ of Mandamus, to declare the action of the respondent authorities in forfeiting the Earnest Money Deposit of Rs.50,000/- deposited by the petitioner as illegal and arbitrary, and, for consequential direction to refund the said amount with interest at the rate of 18% per annum with quarterly rests.

The first respondent, Andhra Pradesh State Civil Supplies Corporation Limited, a State Government undertaking, has called for tenders for appointment of contractor for transportation of food-grains during 1991-92 in Kadapa District. In response to the same, the petitioner, who is engaged in the business of transportation, has responded to the tender notice and offered his rates. The rates to be offered were at two slabs, i.e., Slab-1 is from 0 K.Ms. to 16 K.M and Slab-II is beyond 16 K.Ms. Apart from the petitioner, three other tenderers offered rates and one tenderer, by name, Sri Manjunath Swamy Traders was the lowest tenderer and petitioner herein is the second lowest tenderer. Pursuant to the sealed quotations, negations were held and first lowest tenderer was appointed as transporter. As much as the said tenderer has failed to enter into agreement, orders were issued forfeiting Earnest Money Deposit. Thereafter, the petitioner, who was the second lowest tenderer was appointed as Contractor in Proceedings No. A1/31/91(ESCOM), dated 6-6-1991, issued by the Joint Collector & Ex. Officio Executive Director, Andhra Pradesh State Essential

Commodities Corporation Limited, Kadapa. In the said appointment order, the petitioner was invited to enter into agreement, by paying necessary cash security; failing which, contract will be cancelled besides forfeiture of Earnest Money Deposit. On the ground that the petitioner has failed to honour his offer, by entering into agreement, pursuant to the appointment as contractor, further proceedings No. Ref.A1/31/91 (ESCOM), dated 13-6-1991 were issued ordering forfeiture of the Earnest Money Deposit in favour of the respondent-Corporation. This Writ Petition is filed mainly on the ground that the petitioner has offered his rates as per the illustration given in the Tender Notification, for transportation of food-grains, offering rates at *'Per KM. Per Quintal'*, but, appointment orders were issued taking the said rate as '*Per KM. Per Metric Ton'*; in that view of the matter, it is submitted that the action of the respondents in canceling the appointment order and also forfeiting the Earnest Money Deposit is arbitrary and in violation of rights guaranteed under Article 14 of the Constitution of India.

It is submitted by Sri P.V.Sanjay Kumar, the learned Counsel for the petitioner that bonafidely by looking into the illustrations, the petitioner has offered his rates '*Per KM. Per Quintal*, but, even then, appointment orders were issued by construing the said offer as '*Per Km.Per Metric Ton'*. It is submitted that the very appointment is illegal and, in any event, the respondent authorities ought not to have ordered for forfeiture of Earnest Money Deposit of Rs. 50,000/- deposited by the petitioner. Reliance is placed by the learned Counsel for the petitioner in the case of *A.Murali & Co., Vs. State Trading Corporation of India Limited*

On the other hand, it is submitted by the learned Counsel appearing for the respondent-Corporation that there was specific tender condition to offer rates at '*Per KM. Per Metric Ton'* and the petitioner having offered the rates, though he was appointed, he backed out of the contract; as such, his Earnest Money Deposit was forfeited. Further, it is submitted that though forfeiture was ordered as early as on 13-6-1991, for considerable time, the petitioner has not approached this Court and he filed this Writ Petition in the year 1994 with delay and laches on his part.

Having regard to the above said submissions, in this case it is to be seen, a specific

tender condition was notified, to offer rates at '*Per KM.Per Metric ton*'. Though illustration is given, but at the same time, tender condition notified as such cannot be ignored. Clause 5 of the tender notification reads as follows:

" Security Deposit:

I Stage: For 1st stage, the successful tenderers should furnish a cash security of Rs.1,00,000/- and Bank guarantee of Rs.1,20,000/-.

II Stage: For second stage, successful tenders should furnish a cash security of Rs.12,500/- upto 500 M.Ts and Bank Guarantee of Rs.27,500/- upto an allotment of 300 M,.Ts per month and Rs.37,500/- from 301 to 500 M.Ts of allotment and Rs.25,000/- as cash security and Rs.75,000/- as Bank Guarantee if the allotment exceeds 500 M.Ts."

The cash security deposit should be furnished within three days from the date of receipt of appointment order (Proceedings) and execute the agreement failing which the appointment will be cancelled and the EMD will be forfeited. The Bank Guarantee should be furnished within three weeks from the date of receipt of appointment order/intimation."

In this case, inasmuch as the first lowest tenderer failed to enter into agreement, the petitioner herein, being the second lowest tenderer, was appointed as transporter vide proceedings No.Ref.A1/31/91(ESCOM), dated 6-6-1991. Inspite of the said orders, the petitioner has not furnished security deposit and breached the contract. In that view of the matter, Proceedings No.Ref.A1/31/91 (ESCOM), dated 13-6-1991 were issued forfeiting the Earnest Money Deposit amount, deposited by the petitioner. In that view of the matter, it cannot be said that forfeiture of Earnest Money Deposit is illegal and arbitrary. Having regard to the facts and circumstances of the case and conditions notified, the judgment, relied on by the petitioner, is not supportive to his plea, to declare the forfeiture of Earnest Money Deposit amount, deposited by the petitioner, as illegal. More over, the second respondent has passed orders on 13-6-1991 forfeiting the Earnest Money Deposit in favour of the respondent-Corporation and this Writ Petition is filed in the year 1994. Though it is the contention of the learned Counsel for the petitioner that even before tenders were opened, there was representation submitted by the petitioner and the same

was not considered; but, no such material is placed before this Court to that effect. In that view of the matter, I do not find any merit in this Writ Petition for grant of relief as prayed for.

The Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

-----February, 2005.

Msnr.

To.

1. Vice Chairman& Managing Director,

The A.P. State Civil Supplies Corporation Limited,

(State Govt. Undertaking), Civil Supplies Bhavan,

Somajiguda, Hyderabad,

2. The Joint Collector-Cum-Ex.Officio Director,

A.P. State Civil Supplies Corporation Ltd.,

Cuddapah, Cuddapah Dist.

3.The District Supply Officer-cum-Ex. Officio Dist.Manager,

A.P. State Civil Supplies Corporation Ltd.,

Cuddapah, Cuddapah Dist.

4. Two CD copies.